

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE**

Amanda D., et al., and)
others similarly situated,)
)
Plaintiffs,)
)
v.)
)
Margaret W. Hassan, Governor, et al.,)
)
Defendants.)
)
_____)
United States of America,)
)
Plaintiff-Intervenor,)
)
v.)
)
State of New Hampshire,)
)
Defendant.)
_____)

Civ. No. 1:12-cv-53-SM

**ASSENTED-TO MOTION FOR PLAINTIFFS' ATTORNEYS' FEES AND COSTS
PURSUANT TO SETTLEMENT AGREEMENT**

The Plaintiffs move the Court to approve the Parties' agreed award of attorneys' fees and costs as set forth in the Proposed Class Action Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23(h) and Local Rule 23.1(b)(4). In support of this motion, the Plaintiffs state as follows:

1. On January 3, 2014, the Court granted the Parties' Joint Motion for Preliminary Approval of Proposed Class Action Settlement and scheduled a fairness hearing for February 12, 2014.

2. Pursuant to Federal Rule of Civil Procedure 23(h), a party in a certified class action seeking an award of attorneys' fees and costs must file a motion with the Court. Local Rule 23.1(b)(4) requires that such motion be filed 30 days prior to the final approval hearing.¹

3. The Parties in this case have filed the proposed Class Action Settlement Agreement with the Court. The Settlement Agreement is the result of intensive negotiations by the Parties to resolve this matter, and will significantly expand and enhance community mental health services. In addition to the specific service expansions, which the State has estimated will cost approximately \$30 million, the Agreement provides for the development of effective transition planning, quality assurance processes, quality services reviews, and monitoring to ensure compliance with the Agreement. The Settlement Agreement provides significant and critical relief to class members affording them the opportunity to live quality and meaningful lives in their homes and communities.

4. The Proposed Class Action Settlement also includes an agreed award of attorneys' fees and costs in the amount of \$2,426,800. Settlement Agreement IX.L. Of this total award, \$1,900,000 is compensation for time spent litigating this case and securing a settlement. As explained in the attached Memorandum of Law, Plaintiffs' lodestar, their reasonable hours billed at reasonable hourly rates, was significantly higher than the \$1,900,000 agreed to as part of the negotiation. In addition to exercising reasonable billing judgment, the Plaintiffs' agreed to an approximately 20% across the board reduction to their lodestar.

5. The negotiated award also includes \$400,000 to compensate Plaintiffs' future for monitoring costs. This award for monitoring is a negotiated cap on monitoring fees and as such,

¹ Plaintiffs requested, and the Court granted, a short four-day extension of the deadline to allow Plaintiffs sufficient time to complete the motion, memorandum of law, and supporting documents.

represents a significant concession from Plaintiffs. It is an additional discount built into the negotiated fees as Plaintiffs anticipate that the cost of monitoring this Agreement over the next five years will exceed the amount agreed to in the Settlement.

6. Finally, the total award includes reimbursement of Plaintiffs' litigation costs in the amount of \$126,800.

7. The Agreement provides an installment schedule for payment of fees and costs over the next five years, with the first payment due 90 days after Court approval of the Agreement.

8. In support of their Motion for Attorneys' Fees and Costs Pursuant to Settlement Agreement, Plaintiffs' have presented substantial evidence that the award of fees and costs in the Proposed Class Action Settlement is fair and proper. Plaintiffs' Memorandum of Law in Support of the Motion for Attorneys' Fees and Costs Pursuant to the Settlement Agreement, Exhibits 1-6.²

9. In accordance with the provisions of Federal Rule 23(h)(1), notice of the Proposed Settlement Agreement's provision for attorneys' fees and costs has been directed to class members in accordance with the Court's order of January 3, 2014. The Notice of Proposed Class Action Settlement and Proposed Settlement Agreement have been made widely posted and distributed. In addition, the negotiated amount of attorneys' fees and costs has been publicized in numerous media outlets.

10. The Defendants and the United States assent to the relief requested herein.

² Plaintiffs have provided as Exhibit 1 the Lodestar, Travel Fee, and Litigation Charts detailing the attorneys' fees and costs in this matter. Complete billing records or expense records will be provided to the Court upon request.

WHEREFORE the Parties respectfully request that the Court grant the Assented-to Motion for Plaintiffs' Attorneys' Fees and Costs Pursuant to Settlement Agreement, and approve the negotiated fee award in full.

Dated: January 17, 2014

FOR THE PLAINTIFFS:

Respectfully submitted,

Amanda D., Kenneth R., by his guardian, Tri-County CAP, Inc./GS; Sharon B., by her guardian, Office of Public Guardian, Inc.; Amanda E., by her guardian, Office of Public Guardian, Inc.; and Jeffrey D., by his guardian, Monique Doukas,

By their attorneys:

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically and served on all parties of record by operation of the court's electronic filing system.

January 17, 2014

/s/ Amy Messer